IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.305 of 1995

Reserved on: May 29, 2007

Decided on: *July 02, 2007.*

Gopal Singh & Others ***…..Appellants.***

VERSUS

Smt.Padmo & Others ***…..Respondents.***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants: **Mr.OP Sharma, Sr.Advocate with Mr.K.R.Kashyap, Advocate.**

For the Respondents: **None.**

Kuldip Singh, Judge

The appellants are the sons of original defendant No.1 Ram Dass and are in appeal against judgment and decree dated 15.5.1995 passed by learned Additional District Judge, Shimla in C.A. No.22-S/13 of 1992 confirming the judgment and decree dated 6.1.1992 passed by learned Sub Judge 1st Class, Theog in case No.204/1 of 1987. The parties are referred in the same manner as in the trial Court.

2. The facts of the case, in brief, are that plaintiff Smt.Padmo filed a suit for declaration and injunction against Ram

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

Dass and seven other defendants to the effect that she is exclusive owner in possession over the suit land comprised in *Khata / Khatauni* No.43/40, *Khasra Nos.6 and 9 Kitas 2* measuring 13-4 Bighas situated in *Chak Banjari, Tehsil Theog*, District Shimla, H.P. The case of the plaintiff is that the suit land and other land measuring 59-9 Bighas situate in *Chak Daronal, Pargna Ratesh, Tehsil Theog, District Shimla* vide *Jamabandi* 1984-85 was joint Hindu Family property of Hukmi Ram and his five sons, namely, Ram Dass, Ganesha, Matha, Kalu and Musha, Ganesha husband of Smt.Padmo had died and other four sons of Hukmi Ram are alive.

3. The case of the plaintiff is that in private partition between Hukmi Ram and his five sons, the suit land was given to Ganesha husband of plaintiff and the land situate in village Daronal was given to other sons of Hukmi Ram and since then the sons of Hukmi Ram had been coming in their separate specific possession. The suit land was developed by the husband of the plaintiff and after his death plaintiff is exclusive owner in possession of the suit land. The revenue entries showing defendants as joint owners in possession are wrong and illegal. The defendants are taking undue advantage of the wrong revenue entries and have threatened the plaintiff to dispossess her from the suit land. On these grounds, plaintiff filed the suit.

4. The defendant No.1 contested the suit by filing written statement. He has denied private partition between Hukmi Ram and his sons during the life time of Hukmi Ram. According to defendant

No.1, the land in all Chaks is joint even after the death of Hukmi Ram. It has been pleaded that no one individually developed any land and whatever development was made that was made jointly. The exclusive possession of the plaintiff on the suit land has also been denied. The revenue entries are correct. The defendants have every right and title on the suit land.

5. The defendant No.7 has filed the written statement. He has also denied private partition, as alleged by plaintiff. According to him, the property is joint.

6. The trial Court on 6.1.1992 decreed the suit and plaintiff was declared exclusive owner in possession of the suit land. Ram Dass defendant No.1 filed the appeal against the decision dated 6.1.1992, during the pendency of the appeal in the lower appellate Court Ram Dass died and his legal representatives, namely, Gopal Singh, Smt.Dropti Devi, Smt.Kaushalya Devi, Smt.Durma Devi and Raju were brought on record. The lower appellate Court dismissed the appeal on 15.5.1995. Gopal Singh and Raju are in appeal against the judgment and decree dated 15.5.1995 which has been admitted on the following substantial questions of law:-

(i) Whether the instrument of private partition of land is compulsory registerable?

(ii) *In case of relinquishment of three co-parceners of their share to a single other co-parcener, whether remaining co-parceners are entitled to seek share?*

(iii) Whether a co-parcener or his widow after selling their land in one chak can seek land in other property in another chak when they have sold their entire share?

7. I have heard Shri O.P.Sharma, learned Senior Counsel for the appellants and have also gone through the record.

8. Shri O.P.Sharma, learned Senior Counsel, appearing for the appellants, has submitted that there is no legal evidence on record to show that there was private partition during the life time of Hukmi Ram and the suit l and was given to Ganesha in that private partition. He has submitted that instrument of private partition requires registration and one coparcener cannot relinquish his share in favour of particular coparcener and other coparceners are also entitled to get the share of such coparcener who has relinquished his share. He has also submitted that once a coparcener has sold his share in one Chak he cannot seek his share in another Chak.

Substantial Questions No.(i) to (iii):

9. The plaintiff filed the suit that she is owner in possession of the property after the death of her husband Ganesha who got the suit property in private partition between Hukmi Ram, father of Ganesha and his sons including Ganesha. The private partition alleged by plaintiff has been denied by defendants No.1 and 7 who only contested the suit by filing written statement. The two Courts below have held that suit land fell to the share of Ganesha in private

partition between Hukmi Ram and his all sons. It is not the case of the plaintiff that the suit land was partitioned through writing and, therefore, registration of document of partition is not at all in question. It is also not the case of the plaintiff that her husband Ganesha got the suit property when any other co-sharer in the joint land relinquished his share. It is nobody's case that plaintiff has sold the joint property at other place and now she is claiming share in the suit property separately. The case of the plaintiff is that she is owner in possession of suit land after her husband Ganesha, who got suit land in private partition between Hukami Ram, father of Ganesha and his other sons including Ganesha. DW-1 Ram Dass has admitted that Smt.Padmo is residing in village Nagpur Banjari for the last 12 years and her husband had died 15-16 years. He has admitted that four brothers were given separate land in village Daroul in partition. This is otherwise the case of the plaintiff that in private partition her husband was given the suit land and his other brothers were given land in village Daroul. The two Courts below have rightly concurrently held that Ganesha got the suit land in private partition. The plaintiff Smt.Padmo is the widow of Ganesha. The learned counsel for the appellants has failed to make out any case for interference. The substantial questions of law No.(i) to (iii) are answered against the appellants. The impugned judgment and decree require no interference.

10. No other point was urged.

11. In view of the above discussion, the appeal is dismissed.

No costs.

***July 02, 2007*.** **(*Kuldip Singh*)**
(soni) ***Judge***